

**SEDGWICK COUNTY
BOARD OF ZONING APPEALS
MINUTES
JUNE 3, 2003**

The Sedgwick County Board of Zoning Appeals meeting was held at 3:30 p.m. on Tuesday, June 3, 2003, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following members were in attendance:

DENNIS GRUENBACHER, GRANT TIDEMANN, JANA MULLEN, AND KATHLEEN GIDEON.

The following member was absent: GARY WILEY.

The following Planning Department staff members were in attendance: Assistant Secretary, SCOTT KNEBEL, and Recording Secretary, ROSE SIMMERING.

The following County staff members were in attendance: GLEN WILTSE, Director, Sedgwick County Code Enforcement. Aaron Blase, Assistant County Counselor.

Triplett, Woolf, Garretson, 2959 N. Rock Road, Suite 300, Wichita, KS 67226 c/o Rachel Pirner is representing the County Board of Zoning Appeals.

TIDEMANN: Calls meeting to order. Agenda Item 1, would be to approve of meeting minutes for the following meeting: May 6, 2003.

TIDEMANN moves GIDEON seconds, to approve May 6, 2003 meeting minutes.

MOTION CARRIES 2-0-1. (Gruenbacher abstains)

SCOTT KNEBEL, planning staff: The Item on your agenda today is an appeal of an administrative interpretation that pertains to the definition of a recreation vehicle as it is defined by the Unified Zoning Code and the relation of that definition to the parking of a commercial vehicle on property that is zoned "RR" Rural Residential.

At issue is whether or not a particular vehicle is a recreational vehicle as the Appellant is claiming or whether or not it is a commercial vehicle as it being interpreted by the County Zoning Administrator. If the vehicle is in fact a commercial vehicle, then it is not permitted to be parked on the property that is zoned "RR" Rural Residential, which is highlighted here on the map located at the northeast corner of Glenda and Ross, which the major intersection that is nearby is 85th Street North and 71st Street West or Ridge Road.

The appeal arose from a written interpretation that was issued by Glen Wiltse on April 4, 2003. That written interpretation was issued at the request of Wayne Roberts the Appellant, who on March 27th requested an interpretation of the definition of a recreational vehicle and how it applies to his vehicle, which is a converted semi-tractor and trailer, and how it applies also to a notice of violation which he received from the Sedgwick County Code Enforcement Office for the parking of this vehicle, which they have interpreted as a commercial vehicle in violation of the zoning regulations for the Rural Residential zoning district.

As you can see the area is developed with residential uses. Mr. Robert's property is developed with a single-family residence, and he presently parks the vehicle to the west or behind the single-family residence. This is a site plan that is drawn, that shows the approximate location of the parked vehicle in

relation to the house and property line. This is the vehicle itself. This red semi-tractor, which the Appellant has said that is converted to a recreational vehicle and the associated trailer. There are single-family residences in all directions.

The Appellant contends that the Unified Zoning Code permits converted buses and similar units, which is an actual quote out of the Code, as recreational vehicles, and therefore, his converted semi-tractor, which has been licensed as the State of Kansas as a recreational vehicle, should be permitted to be parked on his rural residential property, and it is his contention is that the vehicle is, in fact, a recreational vehicle as opposed to a commercial vehicle. Mr. Wiltse's interpretation is that the vehicle is originally designed as a commercial vehicle, also that the vehicle exceeds the 40-feet in length that the Zoning Code permits for recreational vehicles, and therefore, cannot be defined as a recreational vehicle.

The Board of Zoning Appeals is provided the authority within Section V-H.6. of the Unified Zoning Code, to hear appeals of written interpretations of the Zoning Administrator. The Board of Zoning Appeals is charged with placing the presumption of correctness on the written interpretation of the Zoning Administrator, and the Zoning Code places the burden of persuasion upon the Appellant to demonstrate through findings of fact to the Board of Zoning Appeals that the decision or interpretation of the Zoning Administrator was in error, or at least partially in error. The Board of Zoning Appeals has the ability to reverse, or affirm, the decision as it is made. In other words, it could in this case say, yes this is a commercial vehicle, and no it is not a recreational vehicle or could reverse that decision and say exactly the opposite. It also may modify the interpretation and essentially issue its own interpretation based on the findings in the public record and the testimony that is heard today.

Page 2 of my memo to the Board lays out the sections of the Zoning Code as they pertain to parking and parking on private property for commercial vehicles, and of course non-commercial vehicles, and then also the definition of commercial and recreational vehicles, and then a section dealing with the storage of vehicles and equipment in the county. I provided those citations in memo form so that you don't have to search through the Zoning Code book to find the most relevant sections to this appeal. That is a summary of the issues of this case. Essentially what the Board has done in the past is to allow the Appellant to come up and state their case as to why they feel that the interpretation is in error and allow the Zoning Administrator to respond to that, and then at that point close the hearing and render a decision.

TIDEMANN: Any questions for staff? At this time we will ask Mr. Roberts or his Counsel to come forward.

ARIAGNO, KERNS, MANK AND WHITE, 212 N. MARKET, STE. 200, WICHITA KS 67202, C/O STEPHEN T. ARIAGNO: This is the first time that I have appeared before the Appeals Board so I am not exactly sure what the decorum is. I wanted to briefly address you. Obviously have all of the Zoning Codes that are in reference here. I want to address what we believe to be a factual scenario that allows Mr. Robert's to park his vehicles as they are parked. What we essentially have here is two vehicles, a semi-trailer, which is defined as a commercial vehicle under the Zoning Code, it is licensed as a semi-trailer, and it is taxed as a semi-trailer. Mr. Robert's understands it as a commercial vehicle. He uses it to haul his race car around and that vehicle is one that he understands and believes that it is a commercial vehicle. It is parked at his residence as an exception because of its weight. It weighs 21,600 pounds. The material I have here for the record, we have the registration indicating the weight of the vehicle as 21,600 pounds, which would be a commercial vehicle that is allowed to be parked under the Zoning Code at his residence.

The second vehicle is the recreational vehicle. That would be the semi-trailer that has been converted to a recreational vehicle. It is equipped with beds, microwave, refrigerator, and a commode in the vehicle.

It is licensed, it is titled, it is taxed, as a recreational vehicle by every definition the State has it is a recreational vehicle. He occasionally uses that vehicle to tow the semi-trailer but these are in essence, and absolutely by definition and by title and by everything that could possibly be used, these are two separate vehicles.

He is parking one at his residence as a recreational vehicle. That would be the tractor that he has converted and licensed as such. The trailer is also parked, and both individual vehicles are allowed as exceptions. I don't know by what definition that the tractor could be called a commercial vehicle if by every definition including by taxation it is a recreational vehicle. These are two separate vehicles that are parked at the residence and both are allowed under the Code. We are asking you to continue to allow them and that you make a decision that is appropriate, and the factual scenario is two separate vehicles, and the exceptions are before you in summary provided with the Codes. I am happy to answer any questions. I have the title and registration receipts for you here today indicating the licensing and title of each separate vehicle.

TIDEMANN: I think we have seen copies of that in our packet, did we not? I am not certain that it necessary to pass it around.

ARIAGNO: I think the only thing that you haven't seen is the weight of the semi-trailer is on here. I will just submit to the secretary for the record.

TIDEMANN: Mr. Roberts do you have anything you want to add at this point?

ROBERTS: No, I believe my attorney has handled it appropriately.

TIDEMANN: Mr. Wiltse, would you like to address the Board?

WILTSE: Aaron Blase, County Law Department will address the Board for me.

AARON BLASE, ASSISTANT COUNTY COUNSELOR: Essentially Mr. Wiltse's ruling here is that the definitions that are contained in the Wichita Sedgwick County Unified Zoning Code govern here. The State not preempted the field of local zoning from us. Sedgwick County has a Zoning Code. It has the definitions that are in your packet, and I think we need to take a look at those. Mr. Ariagno asked how could this be defined as a commercial vehicle? I think the answer is by looking at the definition of a commercial vehicle. The definition in the Zoning Code is in your packet on page 2. Section II-B.14.c. – Vehicle, Commercial means any truck, van, panel truck, delivery van, trailer, semi trailer, or pole trailer drawn by a motor vehicle, which vehicle was designed, used and/or maintained for the transportation of more than 10 persons or the delivery of property for hire, compensation, profit, or in the furtherance of any commercial enterprise.

I don't think there is any question that at the time of its design and manufacture that was the purpose of the semi-tractor trailer combo. It was a commercial unit, and it may be well now that Mr. Roberts has converted, that but the definition is how was it designed or how is it used. But clearly if it is designed to be a commercial vehicle. It is a commercial vehicle Mr. Ariagno touched on what he felt is an exception to the limitation on having one commercial vehicle in a private parking area. You can have one commercial vehicle so long as the gross vehicle rate rating does not exceed 26,000 pounds. It isn't the weight of the vehicle, in other words, we are not concerned with. If you put that vehicle on a scale what is its weight? It is what is the weight rating. That is the issue. What is the weight rating? This vehicle is rated a lot higher than 26,000 pounds. It clearly pulls its own 21,000 and a lot more than 5,000 extra pounds, so its rate rating is probably closer to 80,000 pounds. It is a commercial vehicle. The semi itself does not fall under that weight rating exception.

As far as the trailer, the definition of a recreational vehicle, and I think this applies to both, has a limitation on the length, and the length exceeds 40 feet. A recreational vehicle shall include a motor home, a traveler trailer, and truck camper, a camping trailer and a converted bus. This is not a converted bus, and what this is a semi-tractor trailer, and that is what it appears to be. It is what it appears to be, whether it has got motor home painted on the side or if the state has taxed it or registered it as a motor home. The regulation that is pursuing, and it is a local zoning regulation that does apply, so we think that the definitions are clear that what Mr. Roberts has is a commercial vehicle and does not become a recreational vehicle just because he is using it as recreation vehicle or the fact that the state may have tagged it as a recreational vehicle.

TIDEMANN: When was this vehicle tagged in relationship to a recreational vehicle? During what process or timetable was that done?

WAYNE ROBERTS: The vehicle was tagged about a year, year and half ago.

TIDEMANN: Was that before you converted it or after?

ROBERTS: That trailer is not a old semi-trailer that has been converted? That is a brand new. I bought it brand new last year, and it is a 2002, and it is made specifically for hauling, and I have a four wheeler in it and my race car is in it. That is what I use it for. It is not a conversion, and it is 53 foot long the converted semi is 27 foot long, so it is well within the 40 foot length, and you put them all together and it gets pretty long. I do have a nice driveway in the back. I am on a one acre lot, and there is really not that many people out there. My neighbors don't care. Part of the interpretation, I saw some of that, was talking about whether there is another sentence that goes on with that as far as a commercial vehicle. Well, when it is maintained used to haul freight or anything else that is still a commercial vehicle no matter what you call it. I don't haul freight for WalMart. It is my personal deal, and I haul my race car and my four wheeler to the race track, and I camp in it when I go racing.

BLASE: There is a 40 foot limitation on recreational vehicle. I wanted to point that out that is in the definition. Mr. Roberts alluded to that none of his neighbors have complained. Somebody has complained. That is how it got to the attention of the code enforcement. There was a complaint, and they responded to it.

TIDEMANN: We will go to executive session and will come back in about five minutes.

Mullen moves Gideon seconds to affirm.

MOTION TO AFFIRM THE INTERPRETATION OF THE ZONING ADMINISTRATOR

HAVING CONSIDERED THE ENTIRE RECORD REGARDING THIS MATTER AND HAVING HEARD THE EVIDENCE AS PRESENTED TO THE BOARD HERE TODAY, I MOVE THAT THE BOARD MAKE THE FOLLOWING FINDINGS:

1. That the Board of Zoning Appeals has jurisdiction to hear this appeal, pursuant to K.S.A. 12-759(d) and Section V-H.6. of the Wichita-Sedgwick County Unified Zoning Code, hereinafter referred to as "the Code."
2. That the Board makes the following findings of fact:

- a) That the Zoning Administrator, pursuant to Section V-H.1. of the Code, had the authority to interpret the Code on April 4, 2003.
 - b) The appellant's vehicle was not designed as temporary living quarters for recreational, camping, or travel use and has a body length that exceeds 40 feet and, therefore, cannot be defined by the Code as a recreational vehicle pursuant to Section II-B.14.e.
 - c) That the appellant's vehicle exceeds a 26,000 pound gross vehicle weight rating and was designed for the delivery of property for hire, compensation, profit, or in the furtherance of any commercial purpose and, therefore, is defined by the Code a commercial vehicle pursuant to Section II-B.14.c.
 - d) That the subject property is zoned "RR" Rural Residential, which, pursuant to Section II-B.10.d. of the Code, does not permit the parking of a commercial vehicle that exceeds a 26,000 pound gross vehicle weight rating.
- 3. The Board further finds that the interpretation of the Code by the Zoning Administrator, as set forth in the letter on April 4, 2003, was correct and is supported by evidence presented at this hearing.
 - 4. The Board further finds that the appellant has not met his burden of proof to show that the interpretation was in error.

THEREFORE, BASED UPON THE FOREGOING, I MOVE THAT THE INTERPRETATION OF THE ZONING ADMINISTRATOR HEREIN BE AFFIRMED.

MOTION CARRIES 4-0.

KNEBEL: Just so the appellant knows, we will provide you with documents signed by the Board of Zoning Appeals, and you can proceed as you like concerning this matter.

GRUENBACHER moves MULLEN seconds to appoint Grant Tidemann the Vice-Chair of the COBZA.

MOTION CARRIES 4-0.

Meeting adjourns.